IN THE

Supreme Court of the United States

No. 722 October Term,

CARL McINTIRE; YOUNG PEOPLE'S CHURCH OF THE AIR, INC., a corporation; WORD OF LIFE FELLOWSHIP, INC., a corporation; THEODORE ELSNER, E. SCHUYLER ENGLISH, HIGHWAY MISSION TABERNACLE, a corporation; WILEY MISSION, INC., a corporation; and WESLEYAN METHODIST CHURCH, a corporation,

vs.

WM. PENN BROADCASTING COMPANY OF PHILADELPHIA, owners and operators of Radio Broadcasting Station "WPEN".

PETITION OF CARL McINTIRE, THEODORE ELSNER, and WILEY MISSION, INC., a corporation, FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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INDEX

CASES CITED.

ACTS CITED

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SUPREME COURT OF THE UNITED STATES.

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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioners Carl McIntire; Theodore Elsner; and Wiley Mission, Inc., a corporation, respectfully pray that

a writ of certiorari issue to review the decision of the United States Circuit Court of Appeals for the Third Circuit handed down on October 12, 1945.

JURISDICTION.

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

OPINIONS BELOW.

The District Court for the Eastern District of Pennsylvania filed no opinion. The opinion of the Circuit Court of Appeals ~~(R. 133-137)~~ is reported in 151 F. 2d 597.

QUESTIONS PRESENTED.

1. Is a radio broadcasting station a facility employed in rendering quasi-public service such as water works, gas works, railroads, telephones and telegraphs are, and therefore a public utility?

2. Does Congress under its constitutional power over interstate commerce have the power to extend existing legislation relating to radio broadcasting stations to the point of fixing and regulating the rates to be charged by a radio station as a public utility and in other respects which may be required by public interest, necessity or convenience.

3. Assuming that Congress under its constitutional power over interstate commerce has the power to extend existing legislation relating to radio broadcasting stations to the point of fixing and regulating the rates to be charged by a radio station as a public utility and making other changes if any required by public interest, necessity or convenience, but has not as yet fully exercised such regulatory powers, does this affect in any way the question whether a radio station is a public utility and, as such under the responsibilities and limitations to which public utilites as such are subject under the Constitution, statutes or by common law.

4. As the Federal Communications Act provides that the field of broadcasting is one of free competition (*Federal Communications Commission v. Sanders Bros.*, 309 U. S. 470, 474), does a radio broadcasting station possess the right to bar in advance and for all time any person, firm or corporation of proper character and qualifications from applying for an assignment of time on its station, for a recognized and legitimate purpose to be used in compliance with the rules of the broadcasting station applicable to all advertisers and at the rates required of all advertisers.

5. Does the right of any person, firm or corporation to apply for time on the spectrum of a radio broadcasting station for a radio broadcast to be conducted in accordance with the rules of the station applicable to all advertisers or sponsors, and at the rates paid by other advertisers and sponsors, constitute a property right.

6. The Federal Communications Act (Title 47 U.S.C. Sec. 151) provides:

> "for the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible to all the people of the United States a rapid, efficient, Nation-wide, and

> world-wide wire and radio communication service with adequate facilities at *reasonable charges* (emphasis supplied), * * * there is hereby created a commission to be known as the 'Federal Communications Commission', which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter."

May a broadcasting station, where the choice between applications lies between two equally qualified and competent applicants desiring to occupy the same time on the spectrum for legitimate purposes, reject the application of the aplicant who offers to pay the usual charge of the station and make a gift of that time to the applicant who does not propose to, and does not, pay the usual charge therefor.

7. Including, without restating, the facts, both express and implied set out in the preceding question, does the fact that the applicant, ready and willing to pay the usual charges of the station, has been an advertiser on the station for a number of years paying for the service at the usual rates, give him, under the doctrine of equitable estoppel, and as against an applicant who asks for the same time as a gift any additional rights, and if so what.

8. Without restating the facts stated both express and implied in the two preceding questions, does the fact that the applicant, ready and willing to pay the usual charges of the station; plans to continue broadcasts of religious services and that the station was founded principally for and has since been largely maintained by paid broadcasts of religious services give to such applicant, ready and willing to pay the usual charges of the station, any additional rights under the doctrine of equitable estoppel as against an applicant who plans to receive the same time for the same purpose but without payment and as a gift.

9. If a radio station makes the choice set out in the preceding question as between two persons each desiring to make a religious broadcast and expressly bars the applicant who offers to pay the station's charges and bars such person solely for the reason that he offers to pay such charges, to what extent is that a violation of the free exercise of religion secured by the Constitution.

10. If a radio broadcasting station commits the acts, or some of them, described in questions 4, 6 and 8, are such acts, or any of them so committed, illegal because in violation of the anti-trust laws or of the common law.

11. Having in mind the provisions of Sec. 313 of the Communications Act of 1934 (47 U.S.C. 313) reading in part as follows:

> "Sec. 313. All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to the manufacture and sale of and to trade in radio apparatus and devices entering into or affecting interstate or foreign commerce and to interstate or foreign radio communications."

and the provisions of Sec. 414 of the same act:

> "Sec. 414. Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies."

does the amended bill of complaint herein set out contain any cause of action in favor of the plaintiffs, or any of them, against the defendant.

12. Ought a bill in equity praying for injunction and other relief be dismissed on defendant's motion, without denials

or a hearing on the merits where the bill sets out as facts that the defendant in violation of the right of free speech and free exercise of religion, maliciously and in order to discriminate intentionally against the plaintiffs in particular and against the broadcast of religious services in general, except those of its own choosing, cancelled and refused to renew plaintiffs' contracts for paid time to broadcast religious services, resulting as defendant knew it would in excluding plaintiffs from the air; refused to permit plaintiffs to bid for available paid time at its usual rates in competition with others; and in lieu thereof established a policy of giving the equivalent of plaintiffs' paid time to others free for the broadcasting of religious services, all to the irreparable damage of the plaintiffs.

13. The opinion below states:

> "The authority of the Commission as defined in Section 303, 47 U.S.C.A. Sec. 303, includes the power to pass upon such allegations of unfair treatment as the plaintiffs make here respecting the defendant. The Commission may refuse to renew the defendant's license if it has failed to act in the public interest."

There is no express provision in Section 303 of the Federal Communications Act authorizing the Federal Communications Commission to do anything except to express an opinion as to allegations of unfair treatment such as the plaintiffs make in the case at bar respecting the defendant. Is the fact that "the Commission may refuse to renew defendant's license if it has failed to act in the public interest" a bar to the maintenance by a plaintiff of a proper suit based on facts duly alleged which constitute violations of the Constitution or a statute or statutes or the common law.

14. Does the fact that the Commission may refuse to renew defendant's license if it has failed to act in the public interest confer any power whatever to protect any right of

a plaintiff, which right has been invaded by an act or acts of the defendant.

15. In the opinion below it is stated:

> "In any event the enforcement of the act rests in the F.C.C. and not in the District Courts of the United States save for a right of review of the Commission's orders afforded under Section 402(a)".

Is it a fact that the courts possess no power in relation to the enforcement of the Federal Communications Act other than that stated in the language quoted.

16. The opinion states:

> "The First Amendment was intended to operate as a limitation to the actions of Congress and of the federal government."

Is it a fact that where a radio broadcaster commits an act which excludes all applicants for religious broadcasts who desire time on that station to be paid for at the station's usual rates and permits the station to confine religious broadcasts to those whom it picks out to receive as a gift, free time for religious broadcasts over its station, and a District Court upholds this action and thus puts an interpretation on that portion of the Federal Communications Act which makes it an unconstitutional interference with the free exercise of religion, that this act on the part of the District Court, or of the Circuit Court if it affirms the judgment of the District Court, can not be reviewed either in the Circuit Court, or in this Court, as the case may be.

17. As the choice of programs rests, at least in the first instance, solely with the broadcasting station, licensee of the Federal Communications Commission, and censorship by the Federal Communications Commission is prohibited by Sec. 326 of the Act (47 U.S.C.), if the right of an applicant to apply for time on the program of the licensee

station is a property right, is not a suit in equity by the applicant in the case of a refusal of his right even to make application for a license, necessary and proper procedure, as in the instant case, to protect the property right of the applicant to apply for time on the program of the broadcasting station at the usual time and at the customary rate.

18. Is the Federal Communication's Act of 1934, either by its present wording or by its omission to provide for religious broadcasting, unconstitutional in so far as it gives a licensee under the act the authority to determine arbitrarily what religious views may be broadcast over the radio station, subject only to the final authority of the Federal Communications Commission to grant or revoke a license, and thereby a violation of that portion of the first amendment which provides, 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof' ".

STATUTES AND REGULATIONS INVOLVED.

U.S.C. Title 15, Ch. 1, Section 13(a):

> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent

competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them * * *"

U.S.C. Title 15, Ch. 1, Section 13(b):

"Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished * * *"

U.S.C. Title 15, Chapter 2, Section 44:

"'Antitrust Acts' means the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890; also sections 73 to 77, inclusive, of an Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894; also the Act entitled 'An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes" ', approved February 12, 1913; and also the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', Approved October 15, 1914. Sept. 26, 1914, c. 311, Sec. 4, 38 Stat. 719; Oct. 15, 1914, c. 323, Sec. 1, 38 Stat. 730; Mar. 21, 1938, c. 49, Sec. 2, 52 Stat. 111."

U.S.C. Title 47, Section 151:

"For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-Wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use

of wire and radio communication, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the 'Federal Communications Commission', which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter."

U.S.C. Title 47, Section 303 (f):

"Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this chapter. * * *".

U.S.C. Title 47, Section 307 (a) and (d):

"(a) The Commission, if public convenience, interest or necessity will be served thereby, subject to the limitations of this chapter, shall grant to any applicant therefore a station license provided for by this chapter.

"(d) No license granted for the operation of a broadcasting station shall be for a longer term than three years and no license so granted for any other class of station shall be for a longer term than five years, and any license granted may be revoked as hereinafter provided. Upon the expiration of any license, upon application therefor, a renewal of such license may be granted from time to time for a term of not to exceed three years in the case of broadcasting licenses and not to exceed five years in the case of other licenses, but action of the Commission with reference to the granting of such application for the renewal of a license shall be limited to and governed by the same considerations and practice which affect the granting of original applications."

U.S.C. Title 47, Section 312 (a) and (b):

"(a) Any station license may be revoked for * * * failure to operate substantially as set forth in the license, or for violation of or failure to observe any of the restrictions and conditions of this chapter or of any regulation of the Commission authorized by this chapter."

"(b) Any station license after June 19, 1934 granted under the provisions of this chapter * * * may be modified by the Commission either for a limited time or for the duration of the term thereof if in the judgment of the Commission such action will promote the public interest, convenience and necessity, or the provisions of this chapter."

U.S.C. Title 47, Section 313:

"All laws of the United States relating to unlawful restraints and monopolies and to combinations, contracts, or agreements in restraint of trade are hereby declared to be applicable to * * * interstate or foreign radio communications. * * *"

U.S.C. Title 47, Section 326:

"Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication * * *."

U.S.C. Title 47, Section 414:

"Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at Common law or by statute, but the provisions of this chapter are in addition to such remedies."

STATEMENT.

The defendant determines what programs shall be broadcast over its facilities and makes all the decisions in relation thereto. The programs consist of a continuous series of short features supplied either by the Station's own staff or by other parties who are commonly known as "advertiser."

Advertisers (or "Sponsors", as they are sometimes called) contract separately with the Station for the use of its facilities for specified time on specified days, and the charges (if any) for this privilege are agreed to in advance and specifically set forth in the contract. Payments made to the station by the "advertisers" constitute the station's principal source of income.

On February 20, 1945, the defendant had outstanding a number of contracts with "advertisers", including, inter alia, the plaintiffs in this case who were each sponsoring the broadcast of their respective religious services over the facilities of the defendant on a "commercial" or paid for basis. Each of the contracts included among its "Terms and Conditions" the following provision (wherein the word "Company" referred to the defendant and the word "sponsor" referred to the applicable plaintiff):

> "6. The Company shall have the right to terminate this contract upon giving two week's notice in writing, to the Sponsor, by registered mail, and at the expiration of the time mentioned in said notice this contract shall terminate as if the date set forth therein were the date provided in this contract for the termination thereof."

On the date above mentioned the defendant delivered or caused to be delivered to each of the plaintiffs a letter (substantially the same in each case) reading as follows:

"This is to advise you that Wm. Penn Broadcasting Company is adopting a new policy with respect to religious programs. Instead of time for religious broadcasts being sold on a commercial basis as has heretofore been done, we plan to inaugurate on a substantial basis, as a public service a series of religious broadcasts of general interest, the time for which will not be sold.

Your present commercial contract provides for termination upon two weeks' notice and such notice is hereby given.

We are however willing, if you desire and so advise us, to have the termination effective on April 2, 1945 by which date we wish to have our new policy in full operation.

This policy is in conformity with the general practice of principal radio stations throughout the country. We believe it will make for greater public service to the Philadelphia Community in the important matter of carrying religious worship into the home through radio broadcasting."

Each of the plaintiffs continued to broadcast through to April 2nd, 1945. Subsequent to April 2, 1945, the defendant has declined to permit the continuance of such broadcasts by any of the plaintiffs. Some of the plaintiffs had been operating over the station of the defendant under similar contracts for ten or more years continuously and one, Theodore Elsner, with some interruptions, for thirteen years. The defendant station, the signal letters of which were originally WRAX, was founded as a station largely for the broadcasting of religious services and programs and was originally owned and operated by the Berachah Church of Philadelphia, Pennsylvania. As a consequence defendant station has been consistently the largest seller of time for the broadcasting of religious services and programs in the City of Philadelphia. For a few years recently the

entire time of defendant station on Sundays from 7:30 A. M. until 11 P. M. has been taken up by the broadcasting of religious services and programs under paid contracts. Over a period of years a considerable portion of defendant's income from broadcasting was obtained from religious broadcasts, about 20% of defendant's income coming from that source. The average radio audiences of the plaintiffs consist of large numbers of people in Pennsylvania, New Jersey, New York, Delaware, Maryland, Rhode Island, Massachusetts and other states to whom plaintiffs and others have been bringing the Gospel of Jesus Christ practically ever since the station was established many years ago.

Since April 2, 1945, pursuant to the letter of February 20, 1945, hereinbefore set out, the defendant has given free time to certain religious organizations of its own choosing in the place and stead of religious broadcasts of the plaintiffs and others under paid contracts, and has refused to allow plaintiffs to bid and pay for the same or other time on its station although time is available. On February 20, 1945, the fact was, and defendant knew, that plaintiffs could not obtain any contract time on any other radio station in Philadelphia, and knew that its action would prevent plaintiffs from broadcasting and prevent their large radio audience from hearing, through them, the Gospel of Jesus Christ. The acts of defendant in terminating its contracts with the plaintiffs; in refusing plaintiffs the right to broadcast their services and in refusing plaintiffs the right to bid for time on a competitive basis were done with the intent to discriminate illegally against the plaintiffs. None of the plaintiffs were in default of payment at the time that they severally received the letter of February 20, 1945, and they state without denial that defendant's breach of each of the contracts was done maliciously with the intent to discriminate illegally against plaintiffs in particular and against the broadcasting of religious services in general, except those of defendant's own choosing. Each of the plaintiffs is engaged exclusively in religious work a large part of

which is done over the radio, and, having no adequate remedy at law, each is suffering irreparable damage by reason of defendant's willful, malicious and illegal acts hereinbefore referred to. The plaintiffs now being excluded from radio privileges have lost their radio audiences and such audiences are unable to receive the Gospel message which they had been receiving continuously heretofore from the plaintiffs, and certain religious and charitable organizations heretofore supported by contributions obtained by some of the plaintiffs from their audiences by solicitation on their broadcasting programs have been obliged either to discontinue or seriously to curtail their respective religious or charitable work.

SPECIFICATION OF ERRORS TO BE URGED.

1. The Circuit Court of Appeals erred in not holding that a radio broadcasting station is a facility employed in rendering quasi-public service such as water works, gas works, railroads, telephones and telegraphs, and is therefore a public utility.

2. The Circuit Court of Appeals erred in not holding that Congress under its constitutional power over interstate commerce has the power to extend existing legislation relating to radio broadcasting stations to the point of fixing and regulating the rates to be charged by a radio station as a public utility and in other respects which may be required by public interest, necessity or convenience.

3. The Circuit Court of Appeals erred in not holding that the fact that Congress has not as yet under its Constitutional power over interstate commerce extended existing legislation relating to radio broadcasting stations to the point of fixing and regulating the rates to be charged by a radio station as a public utility and making other changes

if any required by public interest necessity or convenience, does not change the fact that a radio station is a public utility and, as such, under the responsibilities and limitations to which public utilities as such are subject under the Constitution, statutes or by common law.

4. The Circuit Court of Appeals erred in not holding that the defendant radio broadcasting station does not possess the right to bar in advance and for all time any person, firm or corporation of proper character and qualifications, including these plaintiffs, from applying for an assignment of time on its station for a recognized and legitimate purpose to be used in compliance with the rules of the broadcasting station applicable to all advertisers and at the rates applicable to all advertisers.

5. The Circuit Court of Appeals erred in not holding that the right of any person, firm or corporation, including each of these plaintiffs, to apply for time on the spectrum of a radio broadcasting station for a radio broadcast to be conducted in accordance with the rules of the station appliable to all advertisers or sponsors and at rates paid by other advertisers and sponsors constitutes a property right.

6. The Circuit Court of Appeals erred in not holding that the defendant broadcasting station, where the choice between applicants lay between two equally qualified and competent applicants desiring to occupy the same time on the spectrum for legitimate purposes, had no power to reject the application of the applicant who offered to pay the usual charge of the station and make a gift of that time to an applicant who did not propose to and did not, pay the usual charge therefor.

7. The Circuit Court of Appeals erred in not holding that the defendant broadcasting station was estopped as to the plaintiffs herein each and every one of whom was ready and willing to pay the usual charges of the station; had

been an advertiser on the station for a number of years, paying for the service at the usual rates; and because the station itself was one established by a church primarily for the purpose of facilitating religious broadcasts, and refusing to permit plaintiffs or any of them to bid for time on the defendant station's program and assigning the time to other religious broadcasters who did not pay the usual rates but who received the time as a gift and to whom the time was given because they were each the personal choice of the defendant station.

8. The Circuit Court of Appeals erred in not holding that when defendant radio station barred the applicants here each of whom desired to contract for time for religious broadcasts at the usual rates of the defendant station and barred such applicants from applying for such time solely for the reason that such applicant offered to pay the usual and customary charges of the said station for such time, and gave the time free to other persons of its own choosing to be used by them for religious broadcasts, that such an act is a violation of the free exercise of religion secured by the First Amendment to the Constitution.

9. The Circuit Court of Appeals erred in not holding that the acts, or some of them, set out and described in Specification of Errors Nos. 4, 6 and 8 are, as to at least some of such acts so committed, illegal because done in violation of the antitrust laws or the common law.

10. The Circuit Court of Appeals erred in holding that the amended bill of complaint herein does not set out or contain any cause of action in favor of the plaintiffs or any of them against the defendant.

11. The Circuit Court of Appeals erred in holding "The authority of the Commission as defined in Section 303, 47 U.S.C.A. 303 includes the power to pass upon

such allegations of unfair treatment as the plaintiffs make here respecting the defendant."

12. The Circuit Court of Appeals erred if by the language "The Commission may refuse to renew defendant's license if it has failed to act in the public interest" it intended, as it apparently did, to hold that such a failure would be an exercise of "the power to pass upon such allegations of unfair treatment as the plaintiffs make here respecting the defendant."

13. The Circuit Court of Appeals erred if it meant by the language "in any event enforcement of the act rests in the Federal Communications Commission and not in the District Courts of the United States save for a right of review of the Commission's orders afforded under Section 402 (a)" that an advertiser, sponsor or contractor with a radio broadcasting station such as defendant cannot under any circumstances maintain a suit in equity for the protection of its rights.

14. The Circuit Court of Appeals erred if by the following language in the opinion "The First Amendment was intended to operate as a limitation to the actions of Congress and of the Federal Government" it meant that where a radio broadcaster commits an act which excludes all applicants for religious broadcasts who desire time on that station to be paid for at the station's usual rates and permits the station to confine religious broadcasts to those whom it picks out to receive as a gift free time for religious broadcasts over its station, and a District Court upholds this action and thus puts an interpretation on that portion of the Federal Communications Commission act which through such a construction makes an act performed by a radio broadcasting station an unconstitutional interference with the free exercise of religion, that this act on the part of such a radio broadcasting station, approved by a District Court, can not be reviewed

either in a Circuit Court of Appeals or in this court, as the case may be.

15. The Circuit Court of Appeals erred in not holding that a suit in equity by an applicant in the case of a refusal of his right even to make application for a license, as in the instant case, is necessary and proper procedure to protect the property right of the applicant to apply for time on the program of the broadcasting station at the customary rate.

16. The Circuit Court of Appeals erred in affirming the decision of the District Court of the United States for the Eastern District of Pennsylvania herein.

17. The Circuit Court of Appeals erred in not deciding that the Federal Communications Act of 1934 was either by its present wording or by its omission to provide for religious broadcasting, unconstitutional in so far as it gives a licensee under the act the authority to determine arbitrarily even indirectly what religious views may be broadcast over the radio station, subject only to the final authority of the Federal Communications Commission to grant or revoke a license, and thereby occurs a violation of that portion of the first amendment which provides, "Congress shall make no law respecting an establishment of religion or prohibting the free exercise thereof."

REASONS FOR GRANTING THE WRITS.

The Federal Communications Act is a comparatively new Statute. There have been very few decisions by this court on it. This is the first time that a question involving the rights of an advertiser or sponsor (the terms are used interchangeably in the decisions) has been presented to this court for review. One of the two reasons for granting writ

of certiorari stated by Chief Justice Taft in *Magnum Co. vs. Coty*, 262 U. S. 159, 163 is:

> "The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeal was given for two purposes. To bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort."

ARGUMENT.

There is no necessity for an extended argument. The eighteen questions and their complementary seventeen Specifications of Error are arguments in themselves and in the opinion of the petitioners' attorneys sufficient to bring the questions involved for the consideration of the court. However, it is thought it might be helpful to pair the questions and the errors and make brief notations as to some authorities which will be cited. In addition to those authorities, F.C.C. v. Pottsville Broadcasting Co., 309 U. S. 134; F.C.C. v. Sanders Bros., 309 U. S. 470, 474; Radio Station WOW Inc. v. Johnson, S. Ct. June 18, 1945 (not yet reported); National Broadcasting Co. v. U. S., 319 U. S. 190; and Scripps Howard Radio Co. v. F.C.C., 316 U. S. 4, will each, it is contemplated, be cited in support of more than one argument advanced by the petitioners.

Questions 1, 2 and 3, Errors 1, 2 and 3: Numerous authorities, possibly none exactly in point; none opposing position of petitioners. See cases cited under Questions 10, 11, 12, Errors 9, 10 and 16.

Question 4, Error 4; new question; no direct authority, but see authorities cited below under Questions 10, 11, 12, Errors 9, 10 and 16.

Question 5, Error 5:

> "Property is 'nomen generalissimum' and extends to every species of valuable rights and interests, and

includes real and personal property, easements, franchises, and incorporeal hereditaments." (Boston R. R. Co. vs. Salem, 68 Mass. 1, page 35.) See also 4 Pet., 511; U. S. v. Willow River Power Co., 65 S. Ct. 761, 764.

Question 6, Error 6; American Express Co. v. U. S., 212 U. S. 522, 529; Louisville & Natl. R. R. Co. v. U. S., 282 U. S. 740.

Questions 7 and 8, Error 7; Van Renssalaer v. Kearney, 52 U. S. 297, 326 and subsequent decisions.

Question 9, Error 8; Murdock v. Commonwealth of Pennsylvania, 319 U. S. 105, 115, and other cases.

Questions 10, 11 and 12, Errors 9, 10 and 16; New question.

Analogous authorities, none contrary to petitioners' view. (See Cornellius Moore, 267 Fed. 468; Coty v. Pristonets, 285 Fed. 501, 514, 515; In re Debs 158 U. S. 564, 593; Everett v. Williams, 9 L. Q. B. 197; Ex Parte Young, 209 U. S. 123; International Railway Co. vs. Schwab et al., 129 Misc. Rep. 428 (New York); Latham v. Northern Pacific, 45 Fed. 721; Maple Flooring Assoc. v. U. S., 268 U. S. 563; National Mercantile Ltd. v. Keating, 218 Fed. 477; New Hampshire Gas v. Norse, 42 Fed. 2d 490, 493, 494; Philadelphia Co. v. Stimson, 223 U. S. 605-620; Robinson vs. Commissioner, 100 F. 2d 847; Western Union v. Andrews, 216 U. S. 165.)

Questions 13 and 14; Errors 11 and 12; the error here is plain.

Section 303 of the Federal Communications Act (47 U.S.C. 303) does not contain any such authority as the opinion states that it does, and obviously, the fact that "The Commission may refuse to renew the defendant's license if it has failed to act in the public interest" is not an exercise of "the power to pass upon such Allegations of unfair treatment as the plaintiffs make here respecting the defendant". It has no application to the private wrong

done to an advertiser or prospective advertiser by the owner of a broadcasting station.

Question 15, Error 13: Virginia Railway Co. v. System Federation No. 40, 300 U. S. 515; Scripps-Howard Radio Co. vs. FCC, 316 U. S. 4, 14. Radio Station WOW Inc. v. Johnson, S. Ct. June 15, 1945 (not yet reported).

Question 16, Error 14; Virginia Railway Co. v. System Federation No. 40, 300 U. S. 515, Scripps-Howard Radio Co. v. FCC, 316 U. S. 4, 14; see also cases cited under Q, 10, 11, 12, Errors 9, 10 and 16.

Question 17, Error 15: Virginia Railway Co. v. System Federation No. 40, 300 U. S. 515; Scripps-Howard Radio Co. v. F.C.C., 316 U. S. 4, 14, National Broadcasting Co. v. United States, 319 U. S. 190, 223.

Question 18, Error 17; Murdock v. Commonwealth of Pennsylvania, 319 U. S. 105, 115 and other cases.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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